

MEMORANDUM

April 2, 2013

TO: Audit Committee

FROM:  Leslie Rubin, Audit Contract Administrator
Office of Legislative Oversight

SUBJECT: Resolution to Authorize Council Contract for Audit Services

Staff Recommendation: Recommend Council approval of a resolution authorizing the Council President to contract with CliftonLarsonAllen LLP to conduct the audit of the FY13 financial statements.

A Council resolution to authorize the Council President to contract for the audit of the County Government, the Montgomery County Employee Retirement Plans, and Montgomery County Union Employees Deferred Compensation Plan financial statements for the fiscal year ending June 30, 2013 and the calendar year ending December 31, 2013, and other related audit work, is attached at ©1. The Council will introduce and take action on the resolution in the near future.

Background

Section 315 of the Montgomery County Charter states: “The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees.”

The Montgomery County Code (Section 33-51(c)) also indicates that an independent audit of the retirement system will be completed annually by the firm of certified public accountants under contract with the Council.

Auditor Selection Process

The Council’s audit contracting process is established in Council Resolution 16-326. On September 15, 2011, as part of its contracting process, the Council issued a Request for Proposals (RFP) to conduct the audits of the financial statements for the fiscal year ending June 30, 2012 and the calendar year ending December 31, 2012. Following Audit Committee interviews with the three firms with the highest rated written proposals, BDO USA, LLP received the highest number of points followed by CliftonLarsonAllen LLP. The Council entered into a contract with BDO USA, LLP in June 2012 to complete FY12 audit work.

In February 2013, the Audit Committee voted to recommend that the Council not renew the contract with BDO USA, LLP. The Audit Committee directed the Contract Administrator to negotiate a contract for audit services with CliftonLarsonAllen LLP because they had ranked second highest in the most current contracting process.

Overview of the Contract

A draft contract between the Council and CliftonLarsonAllen LLP is attached beginning at ©xx. The County Attorney's Office has reviewed the draft contract for form and legality. The attached draft contract for review does not include copies of the original RFP or the Contractor's proposal. Both of these items will be included in their entirety as part of the final contracts, and copies are available upon request.

Scope of Work. The contract with CliftonLarsonAllen requires the firm to complete the:

- Audit of the County Government Basic Financial Statements,
- Single Audit or Audit of Expenditures of Federal Awards,
- Agreed-Upon Procedures for the National Transit Database Report,
- Agreed-Upon Procedures for the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities,
- 9-1-1 System Audit,
- Employee Retirement Plans Basic Financial Statements Audit, and
- Montgomery County Union Employees Deferred Compensation Plan Financial Statements Audit.

The contract also requires CliftonLarsonAllen to complete management letters for the County Government and the Employee Retirement Plans audits, and to assist the County to comply with the standards for the Government Finance Officers Association (GFOA) Certificate of Achievement.

Deliverables and Responsibilities. The contract specifies specific deliverables and due dates. The deliverables include regular status reports to the Contract Administrator and a briefing with the Audit Committee upon completion of the work.

Articles III and IV list the responsibilities of the Contractor, the County Government, and the Montgomery County Union Employees Deferred Compensation Plan. The County Responsibilities section specifies the tasks required of the Department of Finance, Board of Investment Trustees, Department of Public Works and Transportation, and Department of Technology Services to support the audit.

Cost. Article V specifies the cost of the audit work, the sources of funds, and the departments responsible for approving invoices and making payments.

The cost of the contract with CliftonLarsonAllen totals \$304,061, which is \$11,479 less than the total cost each year for the past five years. It includes:

- \$239,901 for the audit of the County Government Financial Statements and the Single Audit. The source of funds in the Independent Audit NDA;
- \$31,268 for the audit of the Employee Retirement Plans Financial Statements. The source of funds is the Employees' Retirement System, the Retirement Savings Plan, and the County's General Fund;
- \$16,324 for the audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan. The source of funds is the Independent Audit NDA;
- \$9,540 for the Agreed-Upon Procedures for the National Transit Database Report. The source of funds is the Independent Audit NDA;

- \$4,224 for the 9-1-1 System Audit. The source of funds is the State of Maryland Emergency Number Systems Board; and
- \$2,804 for the Agreed-Upon Procedures for the Chief Financial Officer’s Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operations of Municipal Solid Waste Landfill Facilities. The source of funds is the Solid Waste Disposal Fund.

The contract indicates that the prices are firm for two years. The contractor may request, subject to Council approval, price adjustments in the third year of the contract.

Term. The term of the contract is fifteen months from the date of signature by the Council President. During the first engagement period, the contractor will complete the audits of financial statements for the fiscal year ending June 30, 2013 and the calendar year ending December 31, 2013. The Council may renew the contracts, one year at a time, for two additional one-year periods. Upon renewal, the contractor will complete the audits of financial statements for the fiscal years ending June 30, 2014 and 2015 and for the calendar years ending December 31, 2014 and 2015.

The following documents are attached:

Document	Begins on [©]
Council Resolution re: Council Contract for Audit Services	© 1
Contract for Audit Services with CliftonLarsonAllen LLP	© 3

Resolution _____
Introduction _____
Adopted _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By County Council

SUBJECT: Council Contract for Audit Services

Background

1. Section 315 of the Montgomery County Charter states that: “The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees.”

The Montgomery County Code (Section 33-51(c)) indicates that: “An independent audit of the retirement system will be completed annually by the firm of certified public accountants under contract with the Council.”

The Montgomery County Code (Section 21-24(d)) states that: “Financial transactions involving County fire tax funds must be included in the annual audit required by the Charter.”

2. Council Resolution No. 16-326, adopted October 2, 2007, established Council procedures for the selection of the independent auditor. The procedures direct the Council’s Management and Fiscal Policy Committee to perform the functions of the Contractor Qualification and Selection Committee, including reviewing and evaluating proposals and recommending independent auditors to the County Council.
3. Council Resolution No. 16-826, adopted January 27, 2009, established a Council Audit Committee consisting of the members of the Management and Fiscal Policy Committee (currently known as the Government Operations and Fiscal Policy Committee) and the Council President and Council Vice President as ex officio members. The Audit Committee is charged with providing oversight of, among other things, County audit activities and fulfills the functions of the Management and Fiscal Policy Committee established in Council Resolution No. 16-326.

4. The procedures in Council Resolution No. 16-326 indicate that the final selection of the independent auditor will be made by the County Council.
5. The Audit Committee unanimously recommends the firm of CliftonLarsonAllen LLP to conduct the audit of the County Government financial statements for the fiscal year ending June 30, 2013; the audit of the Montgomery County Employee Retirement Plans financial statements for the fiscal year ending June 30, 2013; the audit of the Montgomery County Union Employees Deferred Compensation Plan financial statements for the calendar year ending December 31, 2013; and other tests, reviews and certifications. The Council may renew the contract with CliftonLarsonAllen LLP to complete the audits for the fiscal years ending June 30, 2014 and 2015 and the calendar years ending December 31, 2014 and 2015.

Action

The County Council for Montgomery County, Maryland approves the Audit Committee recommendation and authorizes the Council President to contract with CliftonLarsonAllen LLP to conduct the audit of the County Government financial statements for the fiscal year ending June 30, 2013; the audit of the Montgomery County Employee Retirement Plans financial statements for the fiscal year ending June 30, 2013; the audit of the Montgomery County Union Employees Deferred Compensation Plan financial statements for the calendar year ending December 31, 2013; and other tests, reviews and certifications.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

CONTRACT NUMBER XXXXXX

This contract is entered into between MONTGOMERY COUNTY, MARYLAND, on behalf of the County Council for Montgomery County, Maryland (collectively referred to in this Contract as the "County Council," "County" or "Council"), and CliftonLarsonAllen LLP, 9515 Deereco Road, Suite 500, Timonium, MD 21093 ("Contractor").

BACKGROUND

1. Section 315 of the Montgomery County Charter states "The Council shall contract with, or otherwise employ, a certified public accountant to make annually an independent post audit of all financial records and actions of the County, its officials and employees." The Montgomery County Code Section 33-51(c) indicates that an independent audit of the retirement system will be completed annually by the firm of certified public accountants under contract with the Council.
2. On September 19, 2011, the Council's Audit Committee issued Request for Proposal (RFP) #1012283 to obtain a Contractor to conduct an independent audit of the basic financial statements of Montgomery County; an independent audit of the basic financial statements of the Montgomery County Employee Retirement Plans; an independent audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan; and additional services related to reviews, tests, and certifications.
3. The Audit Committee evaluated the submitted proposals in accordance with evaluation criteria in the RFP and ranked the top three certified public accounting firms.
4. The Audit Committee has recommended CliftonLarsonAllen LLP, a certified public accounting firm, for Contract award for the work described below related to the FY13 audit.
5. The Council adopted Resolution No. _____ on DATE, authorizing the Council President to contract with CliftonLarsonAllen LLP to conduct the independent audits, reviews, tests, and certifications for the fiscal year ending June 30, 2013.
6. The Council and Contractor agree to the following terms:

ARTICLE I. SCOPE OF WORK

- A. **Basic Work.** The Contractor must complete the following Basic Work upon receipt of a notice-to-proceed from the Contract Administrator:
- 1) **County Government Basic Financial Statements Audit** – The Contractor must audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of Montgomery County. The Contractor must prepare an Independent Auditors' Report to express opinions on whether the basic financial statements fairly present, in all material respects, the financial position of the County. The Contractor's opinion may place reliance on reports issued by other Contractors as they relate to component units. The Contractor must conduct the audit in accordance with auditing standards generally accepted in the United State of America and the *Government Auditing Standards* issued by the Comptroller General of the United States.
 - 2) **Single Audit** – As required by Federal Office of Management and Budget (OMB) Circular A-133, the Contractor must a) examine the Montgomery County Report on Expenditures of Federal Awards, b) complete the auditor's portion of the Single Audit Act data collection form, c) review internal accounting and administrative controls, d) examine the status of prior year findings and questioned costs, and e) perform any other work required by or necessary for the County to comply with OMB Circular A-133.

Article I. Scope of Work (continued)

The Contractor must prepare:

- An Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards*,
 - An Independent Auditors' Report on Compliance with Requirements Applicable to Each Major Program, Internal Control Over Compliance, and Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133, and
 - Schedule of findings and questioned costs.
- 3) **Maryland State Uniform Financial Report** – The Contractor must review and attest to the County's uniform financial report submitted to the Maryland State Department of Legislative Services and transmit completed forms as required.
 - 4) **Arbitrage** – The Contractor must review and report on the calculation of rebate amount under the U.S. Treasury arbitrage rebate requirements (if applicable).
 - 5) **Fiscal Year Closing** – The Contractor must participate in the annual planning meeting with the component units included in the Montgomery County, Maryland reporting entity. Participants will discuss the fiscal year closing process, and identify any issues that may impact the timing of the closing. The Contractor must specifically discuss mandated or proposed accounting and reporting changes that would apply to the current fiscal year and subsequent fiscal years.
 - 6) **Agreed-Upon Procedures for the National Transit Database (NTD) Report** – The Contractor must apply agreed-upon procedures to the National Transit Database (NTD) Report prepared by Montgomery County to assist the County to evaluate whether the information included in the Federal Funding Allocation Statistics Form conforms to Federal Transit Administration requirements. The Contractor must prepare an Independent Auditors' Report on applying agreed-upon procedures to the NTD Report's Federal Funding Allocation Statistics Form.
 - 7) **Agreed-Upon Procedures for the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities** – To comply with Federal Environmental Protection Agency Regulation 40 CFR Part 258, the Contractor must review and perform agreed-upon procedures to the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities. The Contractor must prepare an Independent Auditors' Report on Applying Agreed-Upon Procedures.
 - 8) **9-1-1 System Audit** – The Contractor must conduct an audit of the Schedule of Maintenance and Operating Revenues and Expenditures of the County's 9-1-1 System. The Contractor must submit a Schedule of Maintenance and Operating Revenues and Expenditures and an Independent Auditors' Report to express opinions on the Schedule of Maintenance and Operating Revenues and Expenditures.

Article I. Scope of Work (continued)

- 9) **Employee Retirement Plans Basic Financial Statements Audit** – The Contractor must audit the Comprehensive Annual Financial Report of the Montgomery County Employee Retirement Plans. The Contractor must prepare:
- An Independent Auditors' Report to express opinions on whether the financial statements fairly present, in all material respects, the financial position of the retirement plans, and
 - An Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards*.
- 10) **Montgomery County Union Employees Deferred Compensation Plan Audit** – The Contractor must audit the financial statements of the Montgomery County Union Employees Deferred Compensation Plan for calendar year 2013. The audit must be performed in accordance with *Government Auditing Standards*. The Contractor must prepare:
- An Independent Auditors' Report to express opinions on whether the financial statements fairly present, in all material respects, the financial position of the deferred compensation plan, and
 - An Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of Financial Statements in Accordance with *Government Auditing Standards*.
- 11) **Management Letters** – At the completion of the annual audit, the Contractor must submit three (3) management letters to the Council related to the:
- a. Basic financial statements of the Montgomery County Government,
 - b. Basic financial statements of the Montgomery County Employee Retirement Plans, and
 - c. Basic financial statements of the Montgomery County Union Employees Deferred Compensation Plan.

The letters must communicate any significant deficiencies or control deficiencies found during the audit. A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of financial statements will not be prevented, or detected and corrected on a timely basis. The Contractor must include comments, recommendations, and suggested improvements in accounting procedures, internal controls, management actions, and other relevant areas.

Article I. Scope of Work (continued)

12) **Government Finance Officers Association (GFOA) Certificates of Achievement for Excellence in Financial Reporting** – The Contractor must assist the County to ensure that the following comply with the GFOA standards for the Certificate of Achievement:

- a. The Montgomery County Government Comprehensive Annual Financial Report, and
- b. The Montgomery County Employee Retirement Plans Comprehensive Annual Financial Report.

The GFOA standards require financial disclosure greater than required under generally accepted accounting principles.

B. Optional Work. The Council, acting through the Audit Committee, may select areas for special attention by the Contractors. Additionally, the County's Department of Finance may request consulting services on specific financial reporting requirements. The County Council will amend the Contract to add optional work. The Contractor will begin work only after receipt of a notice-to-proceed. Optional work may include, but is not limited to:

- 1) **Auditing Services** – The County may require additional audits or audit related services.
- 2) **Accounting Services** – The County may require professional accounting services from the Contractor to a) assist with the close of the County's books, b) assist with preparation of draft schedules to support each fund and draft financial statements, and c) provide other related professional services.
- 3) **Comfort or Consent Letters** – The County may require that the Contractor perform tests and analyses, in accordance with generally accepted auditing standards, to issue a consent letter authorizing the County to use the Auditors' opinion in County debt offering documents.

The County may also require that the Contractor perform tests and analysis, in accordance with generally accepted auditing standards, to update the Contractor's opinion and issue a comfort letter to include in County debt offering documents.

C. Additional Work. The Council may authorize by contract amendment additional work within the general scope of this Contract. The Contractor should not perform any additional work without first signing a contract amendment and receiving a notice-to-proceed from the Contract Administrator.

D. Changes to Scope of Services. The Council may amend the terms of this Contract upon the issuance of accounting or auditing standards that significantly affect the Contractor's scope of work. The Council and Contractor will agree on the Contract modification before the Contractor performs the work. The Contractor will begin work after receipt of a notice-to-proceed.

ARTICLE II. DELIVERABLES

A. The Contractor must provide up to 20 hard copies and an electronic copy of the following deliverables by December 15th of each year this Contract is in effect to be incorporated in the County Government and Employee Retirement Plans Comprehensive Annual Financial Reports (CAFR) in time for submission for the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting program:

Article II. Deliverables (continued)

- 1) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Government (CAFR version),
 - 2) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Government (liftable version),
 - 3) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Employee Retirement Plans,
 - 4) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting of the Montgomery County Government Based on an Audit of the Financial Statements in Accordance with *Government Auditing Standards*.
 - 5) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting of the Montgomery County Employee Retirement Plans Based on an Audit of the Financial Statements in Accordance with *Government Auditing Standards*.
- B.** The Contractor must provide up to 20 hard copies and an electronic copy of the following deliverables by December 15th of each year this Contract is in effect:

Single Audit

- 1) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting Based on an Audit of the Financial Statements in Accordance with Government Auditing Standards,
- 2) Independent Auditors' Report on Compliance with Requirements Applicable to Each Major Program, Internal Control Over Compliance, and Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133,
- 3) Schedule of findings and questioned costs, and
- 4) Auditor's portion of the Single Audit Act data collection form.

Agreed-Upon Procedures

- 5) Independent Auditor's Report on Applying Agreed-Upon Procedures to the Federal Funding Allocation Statistics Form of the National Transit Database Report, and
- 6) Independent Auditor's Report on Applying Agreed-Upon Procedures to the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities.

9-1-1 System Audit

- 7) Report on the Schedule of Maintenance and Operating Revenues and Expenditures for the County's 9-1-1 System, including the Independent Auditor's Report on the Schedule of Maintenance and Operating Revenues and Expenditures of the County's 9-1-1 System.

Other

- 8) Auditor signature page of the Maryland State Uniform Financial Report, and
- 9) Report on the calculation of rebate amount under the U.S. Treasury arbitrage rebate requirements (if applicable).

Article II. Deliverables (continued)

C. The Contractor must provide up to 20 hard copies and an electronic copy of the following deliverables by March 1st of each year this Contract is in effect:

- 1) Management Letter related to the audit of the financial statements of Montgomery County, and
- 2) Management Letter related to the audit of the financial statements of the Montgomery County Employee Retirement Plans.

Montgomery County Union Employees Deferred Compensation Plan Audit

- 3) Independent Auditors' Report to express opinions on the basic financial statements of the Montgomery County Union Employees Deferred Compensation Plan,
- 4) Independent Auditors' Report on Compliance and Internal Control Over Financial Reporting of the Montgomery County Union Employees Deferred Compensation Plan Based on an Audit of the Financial Statements in Accordance with *Government Auditing Standards*, and
- 5) Management Letter related to the audit of the financial statements of the Montgomery County Union Employees Deferred Compensation Plan.

D. Additional required deliverables include, but are not limited to the following:

- 1) Before beginning work, the Contractor must submit to the Contract Administrator a written detailed audit plan. The plan must include personnel assignments and estimated completion dates for each major audit segment. The Contractor must also participate in a planning meeting with the Contract Administrator and County staff to review the Contractor's audit plan. The Contractor must make adjustments to the audit plan as requested by the County so long as such adjustments are not contrary to generally accepted accounting or auditing standards.
- 2) The Contractor must submit written monthly reports to the Contract Administrator summarizing progress to date and any accounting or auditing concerns that may impact items in the Scope of Work, and
- 3) The Contractor must brief the Council's Audit Committee on the Contractor's reports and Management Letters, provide an overview of mandated or proposed accounting and reporting changes that would apply to the current fiscal year and subsequent fiscal years, and answer Councilmember questions.

E. The Contractor may submit a written request to the Contract Administrator for an extension of a due date for a deliverable when unforeseen circumstances impact the Contractor's work. The Director of the Office of Legislative Oversight, or the Director's designee, will determine, in his or her sole discretion, whether to approve the extension of a due date based on the merits of the Contractor's written request.

F. The Contractor and Council agree that the Council may withhold ten percent (10%) of the final payment to the Contractor in the event of Contractor's failure to provide the deliverables within the time periods designated in this Contract, or within any extended time period approved by the Director of the Office of Legislative Oversight or the Director's designee.

ARTICLE III. CONTRACTOR RESPONSIBILITIES

- A. **Staffing.** The key personnel specified in the Contractor's updated engagement team described in its March 20, 2013 letter to the Contract Administrator must complete the items in Article I. "Scope of Work". Key personnel include the Engagement Partner-In-Charge, Quality Review Partner, Managing Partner of the National State and Local Government Team, Senior Advisor for Public Sector Services, IT Practice Leader, Employees' Retirement System Audit Partner, Financial Statements Audit and Single Audit Partner, Audit Manager(s), and Senior Associates(s).

The Contractor must notify the Contract Administrator in writing if it becomes necessary to replace any of the key personnel. The Contractor must provide the resumes for new personnel assigned to the work, and the new personnel's qualifications and experience must be at least equal to those of the replaced staff. The Contract Administrator must approve the personnel change in writing prior to the change taking place.

- B. **Subcontractors.** The Contractor will subcontract to a certified minority, female, or disabled-owned firm in accordance with the "Minority-Owned Business Addendum to the General Conditions of Contract Between County and Contractor" and the "Minority, Female, Disabled Person Subcontractor Performance Plan." Those documents are attached to this Contract in Attachment B.

- C. **Accounting and Auditing Standards.** The Contractor must conduct the audits in accordance with the accounting and auditing standards listed below, if and as applicable. Each item in Article I. "Scope of Work", Paragraph A. Basic Work is not subject to every accounting and auditing standard listed below. The accounting and auditing standards apply to the individual items in Article I, Paragraph A. based on regulatory and/or accounting industry guidelines. Any Contractor or Contract Administrator uncertainty about which accounting and auditing standards listed below apply to each item in Article I, Paragraph A. will be resolved based on mutual agreement between the Contractor and Contract Administrator.

- 1) Governmental Accounting Standards Board (GASB) "Codification of Governmental Accounting and Financial Reporting Standards" and other GASB publications,
- 2) Generally Accepted Auditing Standards prescribed by the American Institute of Certified Public Accountants, including the industry audit guides for "Audits of State and Local Governmental Units,"
- 3) Government Auditing Standards, Comptroller General of the United States,
- 4) Single Audit Act of 1984, as amended in 1996,
- 5) OMB Compliance Supplement of Single Audits of State and Local Governments,
- 6) OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations,"
- 7) OMB Circular A-102, "Grants and Cooperative Agreements with State and Local Governments,"
- 8) OMB Catalog of Federal Domestic Assistance,
- 9) OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments,"
- 10) Audit Guidelines prescribed by the Legislative Auditor of the State of Maryland,
- 11) Audit Guidelines for examination of 9-1-1 Trust Funds, as prescribed by the Emergency Number Systems Board of the Maryland Department of Public Safety and Correctional Services,
- 12) Examination Guidelines and Certification Requirements prescribed by the Urban Mass Transit Transportation Administration,
- 13) *Federal Information System Controls Auditing Manual*, if applicable,
- 14) *Consideration of Fraud in a Financial Statement Audit* (Statement On Auditing Standards No. 99),

Article III. Contractor Responsibilities (continued)

- 15) Government Finance Officers Association's *Governmental Accounting, Auditing, and Financial Reporting*, and
- 16) Other professional auditing/accounting standards issued, as appropriate.

- D. Irregularities and Illegal Acts.** The Contractor must report promptly in writing any irregularities and illegal acts that the Contractor becomes aware of to the Contract Administrator, County Council President, Chief Administrative Officer, Department of Finance Director, and the Manager of the Office of Internal Audit in the Office of the County Executive.
- E. County's Computer System.** The Contractor and Subcontractor must comply with the County's computer and e-mail security policies, a copy of which shall be provided to the Contractor and Subcontractor by the County.
- F. County's Accounting System and Records.** Montgomery County's on-line computerized accounting and financial reporting system, Oracle eBusiness Suite (EBS), will be available to the Contractor. The Contractor must modify techniques and procedures, if necessary, to be compatible with the County's on-line systems. The Contractor must use the on-line nature of the accounting system to the fullest extent possible.
- G. Access to County Records and Staff.** The Contractor will have access to County records and staff for the purposes of interviews and verification of items within the terms of the audit. The Contractor must coordinate mutually-agreed-upon dates for field work with County personnel. The Contractor must maintain County records as privileged and confidential information. If granted either physical or data rights, the Contractor must only access those items necessary to perform the audit.

The Contractor must organize the work in such a way as to minimize the disruption of County employees' normal duties. The Contractor must coordinate with County personnel prior to requesting electronic data in order to mutually agree upon relevant data specifications, layout, form of requests, and timing of responses. The Contractor must provide the County at least three (3) full business days to prepare written or oral responses to Contractor requests for information, unless the Contractor and County staff from whom the information is requested agree on an alternative time frame. The Contractor must notify the Contract Administrator if the Contractor and County staff cannot agree on an alternative time frame. The Contract Administrator will negotiate an alternative time frame.

- H. Confidential Information.** Some material reviewed by the Contractor in performance of this Contract will be confidential or proprietary. The Contractor must not divulge confidential or proprietary information to any party other than authorized officers of the County Council and other County officials directly involved in this Contract. The Contractor may be required to sign a confidentiality agreement before being given access to some material.

The County understands and acknowledges that the Contractor is a Certified Public Accounting firm governed by statutes and related regulations regulating the practice of public accounting in the state of Maryland (State). As such, under those statutes and regulations the Contractor is prohibited from disclosing confidential client information. The provisions of this Confidentiality Agreement do not change or alter in any way the Contractor's obligations under those statutes or regulations.

Article III. Contractor Responsibilities (continued)

The County also understands and acknowledges that as a firm of Certified Public Accountants, the Contractor is subject to regulatory oversight including “inspection” and “peer reviews” by a variety of bodies including, but not limited to, the Public Company Accounting Oversight Board, the Center for Public Company Audit Firms, the Securities and Exchange Commission, and the boards of accountancy in the states in which the Contractor practices. The County understands and agrees that in order for the Contractor to comply with its obligation for regulatory oversight, the Contractor, without further notice or permission from the County, may provide access to Information subject to this Confidentiality Agreement contained in the files and records of the Contractor for review by regulatory bodies in the normal course of the exercise of their regulatory oversight of the Contractor.

- I. **Publication or Release of Data.** The Contractor must not publish or release, without written concurrence of the County Council, any data, tentative conclusions, reports, correspondence, descriptions, procedures, calculations, compilations, or other information relative to this Contract.
- J. **Communication with the Component Units Included in the Montgomery County, Maryland Reporting Entity.** The component units included in the Montgomery County reporting entity include:
- Montgomery County Public Schools,
 - Montgomery Community College,
 - Housing Opportunities Commission of Montgomery County,
 - Montgomery County Revenue Authority, and
 - Bethesda Urban Partnership, Incorporated.

A copy of all correspondence from the Contractor to the component units, as it pertains to the scope of this contract, must be sent to the Controller in the Department of Finance and to the Contract Administrator at the same time the correspondence is sent to the addressee.

- K. **Other Contracts with the County.** To avoid conflict of interest or unfair advantage, the Council’s Audit Committee must approve any additional work that the Contractor or its affiliates propose to perform for Montgomery County during the period of this Contract. The Contractor must inform the Contract Administrator of additional work the Contractor proposes to complete for the County. The Audit Committee must first verify that the proposed work creates no conflict of interest or unfair advantage before the Contractor can undertake such work.
- L. **Verification and Audits.** The Contractor and all subcontractors must maintain for a period of five (5) years, books, records, documents, and other evidence directly pertinent to the performance of work under this contract (“audit documentation”), in accordance with appropriate accounting procedures and generally accepted government auditing standards. The Contractor must make audit documentation available, upon written request, in a timely manner to other auditors or reviewers in accordance with generally accepted government auditing standards. At the County’s request, the Contractor must provide proper facilities within its offices during normal business hours, for purposes of making audit documentation available to such other auditors or reviewers.

ARTICLE IV. COUNTY AND MCUEDCP RESPONSIBILITIES

A. **Invoices.** The County will pay the Contractor within thirty (30) days of approval of the Contractor's invoice.

B. **Access to County Records and Staff.** The County must provide the Contractor access to County records and reasonable access to the County staff for purposes of interviews and verification of items within the terms of the contract.

C. **Access to Montgomery County Union Employees Deferred Compensation Plan Records and Staff.** In a November 16, 2009 letter to the Chair of the County Council's Management and Fiscal Policy Committee, the Board of Trustees of the Montgomery County Union Employees Deferred Compensation Plan (MCUEDCP) agreed to an external auditing firm, under contract with the County Council, performing an audit of the MCUEDCP using the same manner, processes, and standards as are used when conducting the audits of the County's other accounts and plans.

The Montgomery County Union Employees Deferred Compensation Plan will be the source of records for this work. The Montgomery County Union Employees Deferred Compensation Plan should provide the Contractor access to its records and reasonable access to its staff for the purposes of interviews and verification of items within the terms of the contract. The Contractor must report any problems receiving access to MCUEDCP's records and staff to the Contract Administrator as soon as practicable.

D. **Department of Finance Support.** The Department of Finance must provide limited, temporary space to examine records and documents during the audit, and the capability to view on-line documents. The Department of Finance must also:

- 1) Type confirmation requests and other correspondence requesting information from outside entities,
- 2) Provide access to on-line documents, which should be used to the fullest extent possible by the Contractor, and retrieve and replace source documents located in the Department,
- 3) Draft the County Government financial statements, both in preliminary and final forms,
- 4) Type and reproduce the annual report,
- 5) Prepare a closing schedule that highlights the relevant activities and availability dates for workpapers and reports,
- 6) Make available to the Contractor closing workpapers/binders prepared for County funds. The County does not prepare separate schedules under a Prepared by Client (PBC) request, and
- 7) Provide for a planning meeting with County staff and component unit agencies.

E. **Montgomery County Employee Retirement Plans Support.** The Montgomery County Employee Retirement Plans (MCERP) must provide limited, temporary space to examine records and documents during the audit, and the capability to view on-line documents. The MCERP must also:

- 1) Draft the Employee Retirement Plans financial statements, both in preliminary and final forms,
- 2) Type confirmation requests and other correspondence requesting information from outside entities,
- 3) Provide access to on-line documents, which should be used to the fullest extent possible by the Contractor, and retrieve and replace source documents located in MCERP Offices, and
- 4) Type and reproduce the annual report.

Article IV. County Responsibilities (continued)

F. Department of Transportation Support. The Department of Transportation must:

- 1) Participate in an audit planning meeting with the Contract Administrator and Contractor,
- 2) Prepare the National Transit Database Report's Federal Funding Allocation Statistics Form,
- 3) Prepare the passenger mile data collection calculation,
- 4) Provide access to general ledger reports, and
- 5) Provide access to vendor contracts and monthly vendor contractor reports.

G. Department of Technology Services Support. The Department of Technology Services must:

- 1) Provide access to appropriate staff for interviews,
- 2) Supply listings, reports, policies, and logs as required to support the audit,
- 3) Generate limited rights audit user IDs for use within the local network, and
- 4) Coordinate all responses to Information Technology requests.

The Department of Technology Services will not provide support for audit work related to the component units included in the Montgomery County, Maryland reporting entity.

H. Montgomery County Union Employees Deferred Compensation Plan Support. The Montgomery County Union Employees Deferred Compensation Plan should provide limited, temporary space to examine records and documents during the audit, and the capability to view on-line documents. The Montgomery County Union Employees Deferred Compensation Plan should also:

- 1) Provide contact information for the predecessor auditor and authorize the predecessor auditor to speak with CliftonLarsonAllen LLP regarding the predecessor auditor's work performed for the Montgomery County Union Employees Deferred Compensation Plan,
- 2) Draft its financial statements, both in preliminary and final forms,
- 3) Type confirmation requests and other correspondence requesting information from outside entities,
- 4) Provide access to on-line documents, which should be used to the fullest extent possible by the Contractor, and retrieve and replace source documents located in Montgomery County Union Employees Deferred Compensation Plan Offices, and
- 5) Type and reproduce the annual report.

ARTICLE V. PAYMENTS

A. **Payments for Article I. "Scope of Work," Paragraph A. Basic Work.** The Council will pay the Contractor the following fixed fees for the items in Article I. "Scope of Work", Paragraph A. **Basic Work**:

- 1) **Payment for Subparagraphs 1, 2, 3, 4, 5, 11a, and 12a – County Government Basic Financial Statements Audit, Single Audit, Maryland State Uniform Financial Report, Arbitrage, Fiscal Year Closing, related Management Letter, and assistance with GFOA Certificate of Achievement for Excellence in Financial Reporting** – The County will pay the Contractor a fixed fee not to exceed \$239,901 for Fiscal Year 2013 audit services performed under this portion of the Contract. The Council will pay the Contractor on a monthly basis for work completed during the month, on the condition that the Contract Administrator determines, in his or her sole discretion, that the Contractor is making satisfactory progress toward completing all auditing services. The Independent Audit Non-Departmental Account is the source of funds. The Contract Administrator is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.
- 2) **Payment for Subparagraph 6 – Agreed-Upon Procedures for the National Transit Database Report** – The County will pay the Contractor a fixed fee not to exceed \$9,540 for Fiscal Year 2013 audit services performed under this portion of the Contract. The County will pay the Contractor in two equal installments, with the first installment paid upon completion of the Contractor's field work, and the second installment paid after the Council accepts the deliverables described in Article II. "Deliverables", Paragraph B., Subparagraph 5. The Independent Audit Non-Departmental Account is the source of funds. The Contract Administrator is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.
- 3) **Payment for Subparagraph 7 – Agreed-Upon Procedures for the Chief Financial Officer's Annual Certification of Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities** – The County will pay the Contractor a fixed fee not to exceed \$2,804 for Fiscal Year 2013 audit services performed under this portion of the Contract. The County will pay the Contractor after the Council accepts the deliverables described in Article II. "Deliverables", Paragraph B., Subparagraph 6. The Solid Waste Disposal Fund will be the source of funds. The Department of Transportation is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.
- 4) **Payment for Subparagraph 8 – 9-1-1 System Audit** – The State of Maryland will pay the Contractor a fixed fee not to exceed \$4,224 for Fiscal Year 2013 audit services performed under this portion of the Contract. The State will pay the Contractor upon the Emergency Number Systems Board's acceptance of the deliverables described in Article II. "Deliverables", Paragraph B., Subparagraph 7. Emergency Number Systems Board funds will be the source of funds. The Emergency Number Systems Board is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.

Article V. Payments (continued)

- 6) **Payment for Subparagraphs 9, 11b, and 12b – Employee Retirement Plans Basic Financial Statements Audit, related Management Letter, and assistance with GFOA Certificate of Achievement for Excellence in Financial Reporting** – The County will pay the Contractor a fixed fee not to exceed \$31,268 for Fiscal Year 2013 audit services performed under this portion of the Contract. The County will pay the Contractor on a monthly basis for work completed, on the condition that the Board of Investment Trustees’ designee determines that the Contractor is making satisfactory progress toward completing all auditing services. The Employees’ Retirement System, the Retirement Savings Plan, and the County’s General Fund (on behalf of the Deferred Compensation Plan) will be the source of funds. The Board of Investment Trustees’ designee is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.

- 7) **Payment for Subparagraphs 10, 11c – Montgomery County Union Employees Deferred Compensation Plan Audit and related Management Letter** – The County will pay the Contractor a fixed fee not to exceed \$16,324 for Fiscal Year 2013 audit services performed under this portion of the Contract. The County will pay the Contractor on a monthly basis for work completed, on the condition that the Contract Administrator determines, in his or her sole discretion, that the Contractor is making satisfactory progress toward completing all auditing services. The Independent Audit Non-Departmental Account is the source of funds. The Contract Administrator is responsible for approving invoices and paying the Contractor for services satisfactorily performed under this portion of the Contract.

B. Payments for Article I. “Scope of Work,” Paragraph B. Optional Work. The County will pay the Contractor the following fixed fees for the items in Article I. “Scope of Work”, Paragraph B. Optional Work:

- 1) **Payment for Subparagraphs 1 and 2 – Auditing or Accounting Services** – The County will pay the Contractor the following fixed hourly rates for optional auditing and accounting services under a Council-approved amendment to this Contract. The fee will be subject to a not-to-exceed amount established in the Contract amendment. The County will pay the Contractor upon completion of the optional work. The Contract Administrator is responsible for approving invoices and paying the Contractor for services performed under this portion of the Contract.

Staff Level	Fixed Hourly Rate
Partner	\$224
Manager	\$137
Senior Manager	\$168
Senior	\$108
Staff Auditor	\$82
Specialists	TBD based on required skills
Alternate Composite Rate (when already on site)	\$140

Article V. Payments (continued)

2) **Payment for Subparagraph 3 – Comfort or Consent Letters** – The County will pay the Contractor a fixed fee not to exceed \$2,000 for each:

- Letter consenting to the use of the Contractor’s report on the County’s Fiscal Year 2013 financial statements.
- Comfort letter related to the County’s Fiscal Year 2013 financial statements.

The County will pay the Contractor upon completion of the optional work. The Cost of Issuance appropriation will be the source of funds. The Department of Finance is responsible for approving invoices and paying the Contractor for services performed under this portion of the Contract.

C. Invoices. The Contractor must send all invoices under this Contract to the Contract Administrator, Office of Legislative Oversight, Council Office Building, 100 Maryland Avenue, Rockville, MD 20850. The Contract Administrator will forward invoices to be approved and paid by the Department of Finance, Department of Transportation, the Emergency Number Systems Board, and the Board of Investment Trustees to those organizations for approval and payment.

D. Payments in Excess of the Firm Fixed Fee. If the Contractor reasonably determines that the hours to complete the Scope of Services will exceed the originally estimated amount, the Contractor must submit a written request for additional fees to the Contract Administrator for approval by the Council. The Contractor’s written request must include all reasons for the additional time, as well as the new estimate of hours to complete the task. Any additional hours and fees approved by the Council must be authorized by a contract amendment. There is no guarantee that the Council will authorize additional hours or fees.

E. Payments in Subsequent Years. The prices in this Contract are firm for a period of two years after execution of the contract. Any request for a price adjustment after the two-year period is subject to the following:

- 1) Any request for a price adjustment must be submitted in writing to the Contract Administrator and accompanied by supporting documentation justifying the Contractor’s request. A request for any price adjustment may not be approved unless the Contractor submits to the County Council sufficient justification to support that the Contractor’s request is based on its net increase in costs in delivering the goods/services under the contract;
- 2) Any request for a price adjustment must be submitted sixty (60) days prior to the contract expiration date, if the contract is being amended;
- 3) Any request for a price adjustment may not be approved that exceeds the amount of the annual percentage change of the Consumer Price Index (CPI) for the twelve-month period immediately prior to the date of the request. The request shall be based upon the CPI for all urban consumers issued for the Washington-Baltimore, DC-MD-VA-WV Metropolitan area by the United States Department of Labor, Bureau of Labor Statistics for all items;
- 4) Any price adjustment must be executed by written contract amendment;
- 5) Any price adjustment must be approved by the County Council; and
- 6) The Council will approve only one price adjustment for each contract term, if a price adjustment is approved.

ARTICLE VI. TERM

- A. The term of this Contract is for fifteen (15) months from the date of signature by the Council President. Before the contract term ends, the Council may (but is not required to) renew this contract for two additional one year periods, one year at a time. The Council will determine whether renewal is in the best interest of the County. Contractor's satisfactory performance does not guarantee renewal of this Contract.
- B. During the first engagement period the Contractor will complete the audits of financial statements for the fiscal year ending June 30, 2013 and the calendar year ending December 31, 2013. Upon renewal of the Contract, the Contractor will complete the audits of financial statements for the fiscal years ending June 30, 2014 and 2015 and for the calendar years ending December 31, 2014 and 2015.
- C. All provisions that apply after the contract term, including but not limited to guarantees, disputes, and indemnifications, are deemed to survive the term.
- D. In the event of a merger, acquisition or other change in the legal entity of the Contractor, or in the event of a change in the Contractor's legal name, the contract will continue, contingent upon the County Council's approval, which will not be unreasonably withheld. In the event of a merger, acquisition, or other change in the legal entity of the Contractor or a change in the Contractor's legal name, the Contractor is required to enter into the County's standard amendment for a name change or an assignment of the Contract.

ARTICLE VII. CONTRACT ADMINISTRATOR

- A. The person identified below functions as the Contract Administrator for this Contract:

Name: Leslie Rubin

Address: Office of Legislative Oversight, 100 Maryland Avenue, Room 509, Rockville, Maryland 20850

Phone: (240) 777-7998 Fax: (240) 777-7879

E-mail: leslie.rubin@montgomerycountymd.gov

- B. The Contract Administrator's duties include, but are not limited to the following:

- 1) Serving as liaison between the County Council and Contractor,
- 2) Giving direction to the Contractor to ensure satisfactory and complete performance,
- 3) Monitoring and inspecting the Contractor's performance to ensure acceptable timeliness and quality,
- 4) Serving as Records Custodian for this contract, including documentation of Wage Requirements,
- 5) Accepting or rejecting the Contractor's performance,
- 6) Furnishing timely written notice of the Contractor's performance failures to the County Council, as appropriate,
- 7) Preparing required reports,
- 8) Approving or rejecting invoices for payment,
- 9) Recommending contract modifications or terminations to the County Council,
- 10) Issuing notices to proceed, and
- 11) Monitoring and verifying compliance with the Minority, Female, Disabled Person Subcontractor Performance Plan.

- C. During any prolonged absence of the Contract Administrator, the Director of the Office of Legislative Oversight will serve as the alternate Contract Administrator.

Article VII. Contract Administrator (continued)

D. Unless the Council President changes this delegation of authority in writing, no other person is authorized to perform the functions of the Contract Administrator for this Contract.

ARTICLE VIII. CONTRACT DOCUMENTS & PRIORITY OF DOCUMENTS

The following documents are incorporated by reference into and made part of this Contract and are listed in order of legal precedence below in the event of a conflict in their terms: **(1)** the terms contained in this Contract document; **(2)** the “General Conditions of Contract between County Council and Contractor” (Attachment A) and the “Minority-Owned Business Addendum to the General Conditions of Contract Between County and Contractor” and its companion document “Minority, Female, Disabled Person Subcontractor Performance Plan” (Attachment B); **(3)** Request for Proposal (RFP) #1012283, dated September 15, 2011 (Attachment C); **(4)** the “Business Associate Agreement” between Council and Contractor (Attachment D); and **(5)** the Contractor’s proposal (formerly Clifton Gunderson LLP) dated November 3, 2011 (Attachment E).

(Signature Page Follows)

WITNESS:

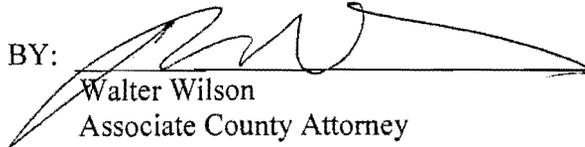
CliftonLarsonAllen LLP

BY: _____ DATE: _____
Keith Novak, Partner
CliftonLarsonAllen LLP

Montgomery County, Maryland

BY: _____ DATE: _____
Nancy Navarro, President
Montgomery County Council

Approved as to form and legality:

BY:  _____ DATE: 4/1/15
Walter Wilson
Associate County Attorney

GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR

1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION

The contractor certifies that all information the contractor has provided or will provide to the County Council is true and correct and can be relied upon by the County Council in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County Council to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

Representatives of the County Council may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Maryland State Finance and Procurement Article, Section 13-101, et seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section. (Effective June 28, 2010).

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages. (Effective January 1, 2011).

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the County Council. Unless performance is separately and expressly waived in writing by the County Council, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the County Council. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

5. CHANGES

The County Council may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the County Council issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

A. In accordance with the Montgomery County Code § 29A-5(b)(9), the Office of Legislative Oversight (OLO) will administer the contract. The contract administrator, subject to paragraph B below, is the Office representative designated by the Director of OLO, and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Department of General Services, and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Department of General Services;
- (10) issue notices to proceed; and
- (11) monitor and verify compliance with any MFD Performance Plan.

B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardees/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants representatives of the County Council access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County Council, including profit or fee, may, at the option of the County Council, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Department of General Services, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Department of General Services, for the purpose of dispute resolution. The Department Head or his/her designee, must forward to the Director, Department of General Services, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Department of General Services or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Department of General Services, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Department of General Services, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code.

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of the Election Law, Annotated Code of Maryland.

13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County Council's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County Council's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County Council and to the County Council's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.
- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3. "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County Council, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County or County Council.

20. INSPECTIONS

County Council representatives have the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County Council, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County Council, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Contract Administrator one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Office of Legislative Oversight, may waive the requirements of this section, in whole or in part.

TABLE A. - INSURANCE REQUIREMENTS
(See Paragraph #21 Under the General Conditions of Contract
Between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non-owned automobiles)				
Bodily Injury each person	100	250	500	See Attachment
each occurrence	300	500	1,000	
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder
Montgomery County Maryland (Contract #)
Office of Procurement
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

*Professional services contracts only

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TABLE B. - INSURANCE REQUIREMENTS
 (See Paragraph #21 Under the General Conditions of Contract
 Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder
 Montgomery County Maryland (Contract #)
 Office of Procurement
 Rockville Center
 255 Rockville Pike, Suite 180
 Rockville, Maryland 20850-4166

(Remainder of Page Intentionally Left Blank)

22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County Council that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Legislative Oversight prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County Council that authorizes the contractor to perform work for the next contract term.

26. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

27. TERMINATION FOR DEFAULT

The County Council may terminate the contract in whole or in part, and from time to time, whenever the County Council determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Office of Legislative Oversight, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County Council's written notice. However, if the County Council determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County Council may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

28. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County Council, in whole or in part, upon written notice to the contractor, when the County Council determines this to be in its best interest. The termination for convenience is effective on the date specified in the County Council's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

29. TIME

Time is of the essence.

30. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

31. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.

Minority-Owned Business Addendum to General Conditions of Contract Between County and Contractor

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Minority Procurement Officer. The letter must explain why a waiver is appropriate. The Director of the Department of General Services or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.
- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.
- H. If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, The Director of the Department of General Services must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

MONTGOMERY COUNTY, MARYLAND
MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN

Contractor's Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

A. Individual assigned by Contractor to ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

B. This Plan covers the life of the contract from contract execution through the final contract expiration date.

C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.

D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business(s) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore. A Certification Letter must be attached. For assistance, call 240-777-9912.

1. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor :

This subcontractor will provide the following goods and/or services:

2. Certified by: _____
 Subcontractor Name: _____
 Title: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN ASIAN AMERICAN DISABLED PERSON
 FEMALE HISPANIC AMERICAN NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____
 This subcontractor will provide the following goods and/or services: _____

3. Certified by: _____
 Subcontractor Name: _____
 Title: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN ASIAN AMERICAN DISABLED PERSON
 FEMALE HISPANIC AMERICAN NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____
 This subcontractor will provide the following goods and/or services: _____

4. Certified By: _____
 Subcontractor Name: _____
 Title: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____

This subcontractor will provide the following goods and/or services: _____

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Provide a statement below, or on a separate sheet, that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation throughout the life of the contract or the basis for a full waiver request.

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

MFD Program Officer

Date: _____

MFD Program Officer

Date: _____

Full Waiver Approved:

Partial Waiver Approved:

Director
Department of General Services

Date: _____

Director
Department of General Services

Date: _____

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. _____) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

Signature

Typed Name

Title

Date

APPROVED:

Director, Department of General Services

Date

Section 7.3.3.4(a) of the Procurement Regulations requires:
The Contractor to notify the Director, Department of General Services of any proposed change to the Subcontractor Performance Plan.

Attachment C

Request for Proposal (RFP) #1012283, dated September 15, 2011

The RFP is not attached. Copies may be requested from the Office of Legislative Oversight.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made by and between Montgomery County, Maryland (hereinafter referred to as “Covered Entity”) and CliftonLarsonAllen LLP (hereinafter referred to as “Business Associate”). Covered Entity and Business Associate shall collectively be known herein as the “Parties”.

I. GENERAL

A. Covered Entity has a business relationship with Business Associate that is memorialized in Montgomery County Contract # _____ (the “Underlying Agreement”), pursuant to which Business Associate may be considered a “business associate” of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996, including all pertinent regulations (45 CFR Parts 160 and 164), issued by the U.S. Department of Health and Human Services, as either have been amended, from time to time, including Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), and including any and all Privacy, Security and Notice Rules or requirements (collectively, “HIPAA”); and

B. The nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information (“PHI”) as that term is defined under HIPAA; and

C. For good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this agreement for the purpose of ensuring compliance with the requirements of HIPAA and the Maryland Confidentiality of Medical Records Act (Md. Ann. Code, Health-General §§4-301 *et seq.*) (“MCMRA”); and

D. This Agreement supersedes and replaces any and all Business Associate Agreements the Covered Entity and Business Associate may have entered into prior to the date hereof; and

The above premises having been considered and incorporated by reference into the sections below, and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree to enter into this Agreement in the manner described in this section and in the sections below:

II. DEFINITIONS.

A. Individual. “Individual” shall have the same meaning as the term “individual” in 45 CFR §§ 160.103, 164.501, & 164.502(g) and shall include a person who qualifies as a personal representative in accordance with 45 CFR §§ 160.103, 164.501 & 164.502(g).

B. Breach. “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402.

C. Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 CFR §164.501.

D. Notice Rule. “Notice Rule” shall mean the provisions related to “Notification in the Case of Breach of Unsecured Protected Health Information” at 45 CFR Part 160 and Part 164, subpart D

E. Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E (*see also* HITECH Act § 13404 and 13405, *et seq*).

F. Protected Health Information. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR §§ 160.103 & 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

G. Required By Law. “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR §§ 164.103 & 164.501.

H. Secretary. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.

I. Security Rule. “Security Rule” shall mean the provisions related to “Security Standards for the Protection of Electronic Protected Health Information” at 45 CFR Part 160, and 164, subparts A and C.

J. Unsecured Protected Health Information. “Unsecured Protected Health Information” or “Unsecured PHI” shall mean PHI that is not secured through the use of a technology or methodology specified by the Secretary in guidance, or as otherwise defined in §13402(h) of the HITECH Act.

III. USE OR DISCLOSURE OF PHI BY BUSINESS ASSOCIATE, INCLUDING PRIVACY, SECURITY, AND NOTICE REQUIREMENTS

A. Except as otherwise limited in this Agreement, or by privilege, protection or confidentiality under HIPAA, MCMRA, or other applicable law, Business Associate may use or disclose (including permitting acquisition or access to) Protected Health Information to perform management and administrative functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate HIPAA, including its Privacy, Security and Notice Rules. Moreover, the Privacy Rule, Notice Rule, and Security Rule provisions of HIPAA are expressly incorporated by reference into, and made a part of, this Agreement.

B. Business Associate may use and disclose (including permitting acquisition or access to) PHI only if such use or disclosure complies with each applicable requirement of HIPAA, including 45 CFR §164.504(e).

C. Business Associate is directly responsible for full compliance with the relevant requirements of the Privacy Rule and Security Rule to the same extent as Covered Entity.

D. Business Associate must not use or disclose (including permitting acquisition or access to) PHI other than as permitted or required by this Agreement, HIPAA, the MCMRA, or as Required By Law, and may do so only in a manner consistent with the Privacy Rule and Security Rule. As part of this, Business Associate must use appropriate safeguards to prevent use or disclosure of PHI that is not permitted by this Agreement or HIPAA. Furthermore, Business Associate must take reasonable precautions to protect PHI from loss, misuse, and unauthorized access, disclosure, alteration, and destruction.

E. Business Associate must implement and comply with administrative, physical, and technical safeguards in a manner consistent with the Security Rule that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.

F. Business Associate must immediately notify Covered Entity, in a manner consistent with the Notice Rule, of any use or disclosure of PHI in violation of this Agreement (including permitting acquisition or access to PHI).

G. In addition to its obligations in Section III.F., Business Associate must document and notify Covered Entity of a Breach of Unsecured PHI, regardless of size of the Breach or potential harm that may be caused as a result of the Breach. Business Associate's notification to Covered Entity hereunder shall:

1. Be made to Covered Entity without unreasonable delay and in no case later than 14 calendar days after the discovery of a Breach, except as otherwise provided by law. For purposes of clarity for this Section III.G.1, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use or disclosure of PHI in a manner not permitted under 45 CFR Part E within 14 calendar days after it reasonably believes PHI has been the subject of a Breach, even if Business Associate has not conclusively determined within that time that the PHI has actually been the subject of a Breach as defined by HIPAA;

2. Include the names and addresses of the Individual(s) whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach. In addition, Business Associate shall provide any additional information reasonably requested by Covered Entity for purposes of investigating the Breach;

3. Be in substantially the same form as Exhibit A hereto; and

4. Include a draft letter for the Covered Entity to utilize, in the event Covered Entity elects, in its sole discretion, to notify the Individual(s) that his or her Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach that includes, to the extent possible:

- a) A brief description of what happened, including the date of the Breach, if known, and the date of the discovery of the Breach;
- b) A description of the types of Unsecured PHI that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, disability code, or other types of information that were involved);
- c) Any steps the affected Individual(s) should take to protect him or herself from potential harm resulting from the Breach;
- d) A brief description of what the Covered Entity and the Business Associate are doing to investigate the Breach, to mitigate losses, and to protect against any further Breach; and
- e) Contact procedures for an Individual(s) to ask questions or learn additional information, which must include a toll-free telephone number of Business Associate, along with an e-mail address, Web site, or postal address.

H. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate must mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it.

I. Business Associate agrees to ensure that any agent, subcontractor, or employee, to whom it provides PHI received from, or created or received by, Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

J. To the extent applicable, Business Associate must provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual specified by Covered Entity in order to meet the requirements under 45 CFR §164.524.

K. To the extent applicable, Business Associate must make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to, pursuant to 45 CFR §164.526, at the request of Covered Entity or an Individual.

L. Business Associate must, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

M. Business Associate must, upon request and with reasonable notice, furnish to Covered Entity security and privacy audit results, risk analyses, policies/procedures, details of previous breaches, and documentation of controls.

N. Business Associate must document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Business Associate must also maintain records indicating who has accessed PHI about an Individual in an electronic designated record set and information related to such access in accordance with 45 C.F.R. § 164.528. Should an Individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business Associate must promptly provide Covered Entity with information in a format and manner sufficient to respond to the Individual's request.

O. Business Associate must, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI that was provided to it by Covered Entity.

P. Business Associate must make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule, Security Rule or Notice Rule. The aforementioned information must be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate must comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held or controlled by Business Associate.

Q. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

R. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or the Underlying Agreement, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the limited purpose for which it was disclosed to the person, and the person must agree to notify Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.

S. Upon request of the Covered Entity, Business Associate must provide the Covered Entity with access to the Business Associate's written security polices and procedures required by HIPAA.

T. Business Associate must, and is expected to, directly and independently fulfill all breach notification requirements under HIPAA. In the event of a breach under HIPAA, by Business Associate, the Covered Entity (Montgomery County, Maryland) reserves the right, but is in no way obligated under this Agreement, to fulfill the breach notification requirements in lieu of Business Associate.

IV. TERM AND TERMINATION.

A. Term. The Term of this Agreement shall be effective as of the effective date of the Underlying Agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Article IV.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, have the right to terminate this Agreement and to terminate the Underlying Agreement and shall report the violation to the Secretary;
2. Have the right to immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible, and shall report the violation to the Secretary; or
3. If neither termination nor cure is feasible, report the violation to the Secretary.
4. This Article IV, Term and Termination, Paragraph B, is in addition to the provisions set forth in Paragraph 27, Termination for Default of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement in which "Business Associate" is "Contractor" and "Covered Entity" is "County" for purposes of this Agreement.;

C. Effect of Termination.

1. Except as provided in this paragraph C, subparagraph 2, upon termination or cancellation of this Agreement, for any reason, Business Associate must return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision applies to Protected Health Information that is in the possession of a subcontractor(s), employee(s),

or agent(s) of Business Associate. Business Associate must not retain any copies of the Protected Health Information.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate must provide to Covered Entity written notification of the nature of the PHI and the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate must extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. Notwithstanding the foregoing, to the extent that it is not feasible to return or destroy such PHI, the terms and provisions of this Agreement shall survive termination of this Agreement with regard to such PHI.

3. Should Business Associate make an intentional or grossly negligent Breach of PHI in violation of this Agreement, the Underlying Agreement, or HIPAA, or an intentional or grossly negligent disclosure of information protected by the MCMRA, Covered Entity has the right to immediately terminate any contract then in force between the Parties, including the Underlying Agreement.

V. CONSIDERATION. Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be reasonably, justifiably and detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. REMEDIES IN EVENT OF BREACH. Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in this Agreement, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of this Agreement. Furthermore, in the event of breach of this Agreement by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Article VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement. Furthermore, these provisions are in addition to the provisions set forth in Paragraph 18, Indemnification, of the General Conditions of Contract Between County and Contractor, attached to the Underlying Agreement in which "Business Associate" is "Contractor" and "Covered Entity" is "County" for purposes of this Agreement.

VII. MODIFICATION; AMENDMENT. This Agreement may be modified or amended only through a writing signed by the Parties and, thus, no oral modification or amendment hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement, from time to time, as is necessary for Covered Entity to comply with the requirements of HIPAA, including its Privacy, Security, and Notice Rules.

VIII. INTERPRETATION OF THIS AGREEMENT IN RELATION TO OTHER AGREEMENTS BETWEEN THE PARTIES. Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement, by its title, date, and substance and specifically state that the provisions of the later written agreement shall control over this Agreement. In any event, any agreement between the Parties, including this Agreement, must be in full compliance with HIPAA, and any provision in an agreement that fails to comply with HIPAA will be deemed separable from the document, unenforceable, and of no effect.

IX. COMPLIANCE WITH STATE LAW. The Business Associate acknowledges that by accepting the PHI from Covered Entity, it becomes a holder of medical records information under the MCMRA and is subject to the provisions of that law. If the HIPAA Privacy, Notice or Security Rules and the MCMRA conflict regarding the degree of protection provided for protected health information, Business Associate shall comply with the more restrictive protection requirement.

X. MISCELLANEOUS.

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA.

B. Regulatory References. A reference in this Agreement to a section in HIPAA means the section in effect, or as amended.

C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Joy Royes, Esq.
Manager, Policy and Operational Risk
Office of the Director
Montgomery County, Department of Health & Human Services
401 Hungerford Drive, 7th Floor
Rockville, Maryland 20850
(240) 777-3247 (Voice)
(240) 777- 3099 (Fax)

D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: 9515 Deereco Road, Suite 500,
Timonium, MD 21093

Attention: Keith Novak, Partner

Phone: (410) 453-5590

D. Maryland Law. This Agreement is governed by, and shall be construed in accordance with, applicable federal law and the laws of the State of Maryland, without regard to choice of law principles.

E. Incorporation of Future Amendments. Other requirements applicable to Business Associates under HIPAA are incorporated by reference into this Agreement.

F. Penalties for HIPAA Violation. In addition to that stated in this Agreement, Business Associate may be subject to civil and criminal penalties noted under HIPAA, including the same HIPAA civil and criminal penalties applicable to a Covered Entity.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

CliftonLarsonAllen LLP

Montgomery County, Maryland

By: _____

By: _____

Name: Keith Novak

Name: Nancy Navarro

Title: Partner

Title: President, Montgomery County Council

Date: _____

Date: _____

EXHIBIT A

FORM OF NOTIFICATION TO COVERED ENTITY OF
BREACH OF UNSECURED PHI

**NOTIFICATION TO MONTGOMERY COUNTY, MARYLAND
ABOUT A BREACH OF UNSECURED PROTECTED HEALTH INFORMATION**

This notification is made pursuant to Section III.G of the Business Associate Agreement between:

- Montgomery County, Maryland, (the "County") and
- _____ (Business Associate).

Business Associate hereby notifies the County that there has been a breach of unsecured (unencrypted) protected health information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

Date of the breach: _____ Date of discovery of the breach: _____

Does the breach involve 500 or more individuals? Yes/No If yes, do the people live in multiple states? Yes/No

Number of individuals affected by the breach: _____

Names and addresses of individuals affected by the breach:

(Attach additional pages as necessary) _____

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

Email Address: _____

Phone Number: _____

Attachment E

**November 3, 2011 Proposal from CliftonLarsonAllen LLP
(formerly doing business as Clifton Gunderson LLP)**

**To Provide Professional Audit Services to
Montgomery County, Maryland**

The Proposal is not attached.